IN THE HIGH COURT OF GLUTARIC AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 419 of 1988

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

( 1 to 5 - No )

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SHASHIKANT RATILAL SHAH

Versus

GLUTARIC SMALL INDUSTRIES CORPORATION LIMITED

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Appearance:

MR PV NANAVATI for Petitioner

MR PV HATHI for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 23/10/96

ORAL JUDGEMENT

The petitioner at the relevant time was serving as a Deputy Manager in the Rajkot Branch of the respondent Corporation(hereinafter referred to as the 'Corporation'). On 23rd December, 1985, a chargesheet was issued against the petitioner for alleged misconduct of permitting payment of transport charges for the

cartage of cement which was actually not transported by the transporter. The details of such unwarranted payment to the transporters have been narrated in the chargesheet. After holding due inquiry into the imputation of charge made against the petitioner, the inquiry officer held that the charges levelled against the petitioner were proved except that the mala fide intention of receiving personal gain and cheating the Corporation was held to have not been proved. In view of the charges proved against the petitioner a show cause notice was issued to the petitioner calling upon him to show cause why the penalty of dismissal from service shall not be imposed upon the petitioner. The petitioner submitted his reply to the said show cause notice and considering the said reply, under the impugned order dated 31st December, 1987, the petitioner was discharged from the service.

It is this order of discharge from service issued on 31st December, 1987 which is the subject matter of challenge in this petition.

Learned Advocate Mr.Nanavati for the petitioner has read over the whole of the inquiry report as well as the depositions of witnesses recorded in course of the inquiry. Mr.Nanavati has contended that the evidence led before the inquiry officer has not been correctly appreciated and in view of the deposition of the witnesses in course of the cross examination by the petitioner, the inquiry officer has erred in holding that the imputation of charges made against the petitioner was proved. He has further submitted that on the date in question i.e. on the date when the goods were transported directly from Railway Yard and were not brought to the Corporation's godown i.e. on 18th May 1985 the petitioner was on leave and the petitioner, therefore, cannot be held to be responsible for breach of any rules or procedure in delivering the goods directly from the Railway yard. He has further submitted that ordinarily the goods were brought to the godown and it was in exceptional cases that the goods were delivered directly from the Railway yard. There was no separate register maintained for the goods which were delivered from the Railway Yard and the factum of such direct delivery was not brought to the notice of the petitioner by his subordinates. In the circumstances, there was no occasion for the petitioner to raise a doubt whether the transporters had actually transported the goods in question or not. Petitioner cannot be held to be guilty of making payment of the cartage of the goods not transported by the transporters. Mr.Nanavati has also

submitted that in any view of the matter the Branch Office was required to make payment to the tune of 80% of the transporters bill and the remaining 20% of the bill amount was required to be paid by the head office. In the event, some overpayment is made to the transporters by the branch office same could have been adjusted by the head office against the amount of 20% of the bill amount of the transporter. Thus, according to Mr. Nanavati, the petitioner has not committed any misconduct and the finding recorded by the inquiry officer is perverse and considering the evidence led in course of the inquiry, no reasonable person could have recorded a finding against the petitioner. Mr.Nanavati has relied upon Rules 93 and 94 of the Staff Service Rules 1974 and has submitted that the act committed by the petitioner even if it is held to have been proved does not fall within the four corners of the provisions made in either of the rules 93 or 94. The petitioner, therefore, cannot be said to have committed any misconduct. In the alternative Mr.Nanavati has submitted that penalty of discharge from service is too harsh and considering the unblemished service record of the petitioner the petitioner should have been visited with lesser punishment. In support of his contention he has relied upon the judgment of the Hon'ble Supreme Court in the matter of Rama Kant Misra vs. State of U.P. and others ( (1982) 3 SCC 346), and in the matter of Management of Hindustan Machine Tools Ltd., Bangalore, vs. Mohd.Usman and Another, ( (1984)1 SCC 152.

In both the above referred cases the Hon'ble Supreme Court was considering an order made by the Labour court. The court has held that Labour court in exercise of its discretion under section 11-A can reduce the punishment. On the facts of the case before the court the court held that the punishment imposed upon the workman concerned was disproportionate to the guilt established against the workman and the Labour court under section 11-A of the Industrial Disputes Act had power to impose punishment or alter the punishment after evaluating the gravity of misconduct proved.

Mr.Nanavati has relied upon the application made by the petitioner on 1-9-86 calling upon the Corporation to provide copies of the documents listed in the said application. Mr.Nanavati has submitted that though there was a specific demand for the copies of the said document same were not furnished to the petitioner which has adversely affected the defence of the petitioner. Mr.Nanavati has submitted that these documents were required to prove that earlier, that is, before the petitioner took over the charge at Rajkot Branch, similar

irregularities were committed in the said branch. Mr.Nanavati has also emphasized that even if the petitioner had made any unwarranted payment to the transporter same was through oversight and said act cannot be said to be an act of negligence. Thus, the petitioner cannot be said to be remiss in discharge of his duties and could not have been imposed punishment for such inadvertent oversight. He has referred to charge No.4 and has submitted that the letter purported to have been written by the petitioner on 24th October, 1985 and ante dated as of 11th October 1985 has not been produced on the record nor a copy of the letter has been furnished to the petitioner. According to the submission of Mr.Nanavati the disciplinary action thus is vitiated for breach of principles of natural justice. He has, therefore, claimed that the impugned order of discharge from service requires to be set aside and the petitioner be reinstated in service with all the back wages.

The claim made by the petitioner has been contested by the Corporation. Learned Advocate Mr.Mehta has appeared for the Corporation and has submitted that the copy of letter dated 24th October, 1985 which is purported to have beenwritten by the petitioner on 24th October, 1985 and ante dated as of 11th October, 1985 has been produced by the presenting officer as is recorded by the inquiry officer. Be it noted that the inquiry officer in his proceedings has made a reference to the said letter having been produced by the Presenting officer and having been exhibited. The petitioner at no point of time before the inquiry officer has ever raised a dispute regarding service of the copy of the said document. Petitioner, therefore, cannot be permitted to agitate that the copy of the said letter was not furnished to him at this stage in the writ petition.

Mr.Mehta has relied upon the application dated 1st September, 1986 and has submitted that the documents which are referred to in the said letter had no relevance whatever with the matters at issue in the disciplinary action held against the petitioner. He has pointed out that those documents referred to the period prior to the petitioner took over charge at Rajkot Branch. Mr.Nanavati has also submitted that the said documents were required to show that earlier also similar irregularities were being committed at the Branch. I fail to comprehend how the petitioner's defence has been prejudiced for want of the said documents. The delinquent is certainly entitled to the documents which are necessary for his defence. However, he cannot be permitted to make a fishing inquiry regarding similar

incidents which may have occurred in the past. Thus, in my view, non-furnishing of the said documents have not prejudiced the defence of the petitioner and the disciplinary action held against the petitioner cannot be said to have been vitiated for want of the said documents. The Corporation cannot be said to have committed breach of the principles of natural justice by refusing to furnish copies of the documents demanded under application dated 1st September, 1986.

Mr.Nanavati has read over the proceedings of the inquiry as well as the deposition of the witnesses examined in course of the inquiry. Upon perusal of the said proceedings and the depositions of the witnesses, it cannot be said that the findings recorded by the inquiry officer are based on no evidence, nor can it be said that the findings recorded by the inquiry officer are perverse as alleged by Mr.Nanavati. It is well settled proposition of law that the High Court exercising its power of judicial review under Article 226 of the Constitution of India would not endeavour to reappreciate the evidence and to record its own findings in place of the findings recorded by the inquiry officer. In the present case, the inquiry officer has discussed the evidence led before it in details and having evaluated the evidence has held that the imputation of charges made against the petitioner was proved. The charge No.4 that the petitioner had fabricated the document has also been held to be proved.

Thus the imputation of charge made against the petitioner having been proved, it cannot be gainsaid that the petitioner has committed misconduct as envisaged under Rules 93 and 94 of the Staff Service Rules, 1974. The petitioner has certainly failed to promote the Corporation's interest and to serve the Corporation honestly and faithfully as is expected of him.

The question now arises for the consideration by the court is whether the punishment imposed upon the petitioner for the guilt established against him can be said to be disproportionate and that this court will be justified in interfering with the punishment imposed by the competent authority.

Learned Advocate Mr.Mehta has relied upon the judgment of the Hon'ble Supreme Court in the matter of B.C.Chaturvedi v. Union of India and Ors. (JT 1995(8) S.C.65). It has been held by the Supreme Court that "The Court/Tribunal in its power of judicial review does not

act as appellate authority to re-appreciate the evidence."

He has particularly relied upon Paragraphs 12 to 18 of the said judgment and has submitted that the court in its power of judicial review does not act as appellate authority to re-appreciate the evidence. The Court may interfere where the authority held the proceeding against the delinquent in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or when the conclusion or the rules based on no evidence. He has further submitted that the High Court while exercising the power under judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty unless the penalty imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court. In the matters of Rama Kant Misra (supra) and Management of Hindustan Machine Tools Ltd.,Bangalore(supra) the Hon'ble Supreme Court was considering the powers of the Labour court/Tribunal under section 11-A of the Industrial Disputes Act. It is settled proposition of law that the Court of Tribunal established under the Industrial Disputes Act has a discretion to record its own findings and to substitute the punishment imposed by the employer. In my view the said principle does not apply to the court exercising its power of judicial review under Article 226 of the Constitution of India. The judgment of the Hon'ble Supreme Court in the matter of B.C.Chaturvedi v.Union of India and Ors.(supra) answers the contentions raised by Mr.Nanavati. Since I have held that the findings recorded by the Inquiry Officer can neither be said to have been based on no evidence nor can it be said to be perverse. The findings recorded by the Inquiry Officer and the conclusion drawn cannot be interfered with; if considering the gravity of the misconduct committed by the petitioner and the representation submitted by him the Corporation has considered the punishment of discharge from service as proper punishment the same cannot be interfered with. Under Rule 102 of the Staff Service Rules 1974 the Corporation is empowered to impose punishment of discharge from service and accordingly punishment has been imposed upon the petitioner. I, therefore, do not find any justification in interfering with the punishment imposed upon the petitioner.

In view of the above discussion, the petition fails. The petition is dismissed with costs. Rule is discharged.

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CIVIL APPLICATION NO.2229 of 1988
In
Special Civil Application No.419 of 1988

ORAL ORDER:

The applicant original petitioner has made this application for remittance of his outstanding dues. Mr.Nanavati stated that still the claim of the medical bill to the tune of Rs.4,476.65P. remains outstanding against the Corporation. Mr.Mehta has submitted that the petitioner is not entitled to the said bill amount. However, he has not been able to explain why the petitioner is not entitled. He has relied upon Rule 101 of the Staff Service Rules. However, I am not satisfied that the petitioner is not entitled to the medical bill as is averred by Mr.Mehta. In the circumstances, it would be expedient that the respondent No.2 shall consider the petitioner's claim for medical bill as aforesaid and make necessary orders within a period of three weeks from the date of the receipt of the copy of this order.

Civil Application is disposed of.

Dated:23-10-96. (Miss R.M.Doshit,J.)